

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WAYNE O. REVEL, JR.,	§
	§ No. 517, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0610006478
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 4, 2010  
Decided: November 24, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

**ORDER**

This 24<sup>th</sup> day of November 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Wayne O. Revel, Jr., filed an appeal from the Superior Court's July 28, 2010 order adopting the Commissioner's June 14, 2010 report, which recommended that Revel's first motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.<sup>1</sup> The plaintiff-appellee, the State of Delaware, has moved to affirm

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<sup>1</sup> Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>2</sup> We agree and affirm.

(2) The record reflects that, on January 14, 2008, Revel was found guilty by a Superior Court jury of two counts of Robbery in the Second Degree and one count of Attempted Robbery in the Second Degree in connection with two bank robberies, one in Kent County and the other in New Castle County, and one attempted bank robbery in New Castle County. Revel was sentenced as a habitual offender to a total of 15 years of Level V incarceration, to be suspended after 12 years for probation. This Court affirmed Revel's convictions on direct appeal.<sup>3</sup>

(3) In his first motion for postconviction relief filed in the Superior Court, Revel asserted claims of ineffective assistance of counsel, among other things. Because this was Revel's first postconviction motion, his attorney's affidavit was requested.<sup>4</sup> In this appeal from the Superior Court's denial of Revel's first motion for postconviction relief, Revel renews his claims of ineffective assistance. Specifically, he contends that his counsel failed to conduct a proper investigation, failed to subpoena alibi witnesses and failed to conduct a proper cross-examination of a key witness for the

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<sup>2</sup> Supr. Ct. R. 25(a).

<sup>3</sup> *Revel v. State*, 956 A.2d 23 (Del. 2008).

<sup>4</sup> Super. Ct. Crim. R. 61(g)(2).

State. In essence, Revel's argument is that the outcome of the trial would have been different if the jury had known he was test driving a car at the time of the robberies, that he was employed at the time he was arrested, explaining why he had a large amount of cash in his pocket, that his weight did not match the description of the robber given to police, and that a witness's identification of him as the robber was questionable.<sup>5</sup> Revel also claims that the Superior Court abused its discretion by not holding an evidentiary hearing regarding additional evidence "outside the record" that his attorney failed to bring to the jury's attention.

(4) The record reflects that, in each of the robbery incidents, surveillance footage revealed the robber to be a white male wearing oversized clothing, tan boots, and a white baseball cap with a raised white symbol on the front. After the surveillance footage was aired on television, Revel's probation officer, Kerry Bittenbender, contacted police and told them he thought the robber was Revel. At the time of Revel's arrest, a white hat and tan boots like those in the surveillance videos were found in the car he was driving and \$1,136 was found in his pants pocket, even though the evidence was that he was unemployed at the time. At trial, the surveillance

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<sup>5</sup> To the extent that Revel has not argued other grounds to support his appeal that were previously raised, those grounds are deemed to be waived and will not be addressed by this Court. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

videos were played for the jury and they were able to compare the physical appearance of the robber with that of Revel.

(5) In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.<sup>6</sup> Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."<sup>7</sup> The defendant must make concrete allegations of ineffective assistance, and substantiate them, or risk summary dismissal.<sup>8</sup> As noted by this Court on Revel's direct appeal, this was not a "close case."<sup>9</sup> The evidence against Revel was strong. Even assuming that Revel's counsel's actions constituted error, there is no evidence that they resulted in any prejudice to Revel. We, therefore, conclude that Revel's claims of ineffective assistance are without merit.

(6) It is within the discretion of the Superior Court to determine whether an evidentiary hearing is necessary on a motion for postconviction

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<sup>6</sup> *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>7</sup> *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

<sup>8</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

<sup>9</sup> *Revel v. State*, 956 A.2d 23, 30 (Del. 2008).

relief.<sup>10</sup> In this case, the Superior Court properly determined that an evidentiary hearing should not be scheduled for the purpose of adducing evidence “outside the record.” We, therefore, conclude that Revel’s claim of abuse of discretion on the part of the Superior Court also is without merit.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>10</sup> Super. Ct. Crim. R. 61(h)(1) and (3).